

108 FERC ¶ 61,129  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suede G. Kelly.

Idaho Power Company

Project No. 2055-010

ORDER ISSUING NEW LICENSE

(Issued August 4, 2004)

1. This order issues, pursuant to sections 4(e) and 15 of the Federal Power Act (FPA),<sup>1</sup> a new license to Idaho Power Company (Idaho Power or licensee) to continue operation and maintenance of the 82.8-megawatt (MW) C.J. Strike Hydroelectric Project No. 2055, located on the Snake and Bruneau Rivers in Owyhee and Elmore Counties, Idaho. Part of the project occupies federal lands managed by the U.S. Bureau of Land Management (BLM).<sup>2</sup>
2. This order also approves, as it applies to the C.J. Strike Project, an offer of settlement filed by Idaho Power on behalf of itself and the U.S. Fish and Wildlife Service (FWS) with respect to the relicensing of C.J. Strike and four other Idaho Power projects

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<sup>1</sup> 16 U.S.C. §§ and 797(e) and 808, respectively.

<sup>2</sup> Section 4(e) of the FPA, 16 U.S.C. § 797(e), provides that the Commission may issue a license for a project located on a federal reservation (defined at FPA section 3(2), 16 U.S.C. § 794(2)) only after it finds that the license will not interfere or be inconsistent with the purpose for which the reservation was created or acquired. The C.J. Strike Project occupies 2,982.63 acres (exclusive of transmission lines rights-of-way) of BLM land used for grazing. We conclude that the project's occupancy of this reservation does not interfere, and is not inconsistent, with the reservation's purpose or use. In addition, section 4(e) provides that the license of a project on reservation land shall contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation. The Secretary of the Interior did not file any conditions under section 4(e).

on the Snake River. The settlement agreement contains provisions relating to the protection of specific federally listed threatened and endangered snail species. The new license issued in this order for the C.J. Strike Project includes conditions consistent with the terms of the agreement.<sup>3</sup>

### **BACKGROUND**

3. Today the Commission is issuing new licenses for five Idaho Power projects on the central portion of the Snake River Basin, in south-central Idaho.<sup>4</sup> Starting furthest upstream, they are the 12.5-MW Shoshone Falls Project No. 2778, at river mile (RM) 615;<sup>5</sup> the 34.5-MW Upper Salmon Falls Project No. 2777 (RM 580); the 60-MW Lower Salmon Falls Project No. 2061 (RM 573); the 75-MW Bliss Project No. 1975 (RM 560); and the C.J. Strike Project (RM 494-518).<sup>6</sup> The first four projects, located along a 57-mile-long reach of the river, are sometimes referred to as the mid-Snake projects.

4. More than 1,000 miles long, the Snake River is the largest tributary of the Columbia River. The Snake River has been heavily developed, as evidenced by the 23 dams on its mainstem, impounding nearly 50 percent of the river. Of the 37 million acre-feet of water that drains into the river each year, more than 14 million acre-feet are diverted for irrigation, municipal, and various other uses. The resulting impacts on the resources of the Snake River have included inundation of fish-spawning, wildlife, riparian, and island habitat.<sup>7</sup>

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<sup>3</sup> The agreement is found at Appendix B to the new license issued concurrently for the Bliss Project No. 1975.

<sup>4</sup> The Snake River is a navigable waterway of the United States from its mouth on the Columbia River (which flows to the Pacific Ocean) to the mouth of the Henrys Fork River, at about river mile 774. Idaho Power Company, 14 FPC 71 (1955).

<sup>5</sup> River miles are counted beginning at the mouth of a river.

<sup>6</sup> On the Malad River, a tributary to the Snake River entering the Snake between the Bliss and the Lower Salmon Falls Projects is Idaho Power's 20.7-MW Malad Project No. 2726, a two-development run-of-river project whose current license expires July 31, 2004.

<sup>7</sup> See City of Idaho Falls, Idaho, 80 FERC ¶ 61,342 at 62,129 (1997).

**PROJECT DESCRIPTION**

5. Construction and operation of the C.J. Strike Project was originally licensed effective December 1, 1950, with a 50-year term that expired in 2000.<sup>8</sup> The project has continued to operate under annual licenses.<sup>9</sup>

6. The project occupies about 3,373 acres of federal lands managed by the BLM. It includes a 3,220-foot-long, 115-foot-high dam with three power intakes and three 22-foot-diameter penstocks; a reservoir extending 32 miles upstream on the Snake River and 12 miles upstream on the Bruneau River,<sup>10</sup> having a surface area of 7,500 acres and a storage capacity of 240,000 acre-feet at normal maximum water surface elevation of 2,455 feet; a 198-foot-long powerhouse at the base of the dam containing three turbine-generator units totaling 82.8 MW installed capacity; a 340-foot-wide, 78-foot-high concrete spillway with eight bays; and two transmission lines, one 65 miles long and the other 25 miles long. The current average annual generation at the project is 558,299 megawatt-hours (MWh).

7. The project is block-loaded to meet daily system demands, *i.e.*, one, two, or three units are brought on- and off-line as demand and water availability dictate. The project also operates in conjunction with the upstream Bliss and Lower Salmon Falls Projects to meet short-term load demands. This operation results in reservoir and tailwater level fluctuations. Although under the current license the impoundment is allowed to fluctuate up to 5 feet per day, the daily fluctuation averages only 0.3 foot, with 70 percent of daily fluctuations being 0.2 foot or less. Daily tailwater fluctuations vary up to 4 feet, but 70 percent of the time are 3 feet or less. Under the current license, the project does not operate under minimum instream flow or downstream ramping rate requirements. However, Idaho Power voluntarily releases a minimum flow of 3,900 cfs.

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<sup>8</sup> Idaho Power Co., 10 FPC 722 (1951).

<sup>9</sup> See FPA section 15(a)(1), 16 U.S.C. § 808(a)(1).

<sup>10</sup> The project dam is located just below the confluence of the Snake and Bruneau Rivers.

## **PROCEDURAL HISTORY**

8. Idaho Power filed its application for a new license for the C.J. Strike Project on November 24, 1998. Public notice of the application was issued, and June 25, 1999, was the deadline to file comments, protests, and motions to intervene.<sup>11</sup> Intervenors in the proceeding are the U.S. Department of the Interior (Interior), National Oceanic and Atmospheric Administration-Fisheries (NOAA Fisheries), State of Idaho, Shoshone-Bannock Indian Tribes, Shoshone-Paiute Tribes of the Duck Valley Indian Reservation,<sup>12</sup> and joint petitioners Idaho Rivers United and American Rivers (jointly Idaho Rivers). Idaho Rivers opposed issuance of a new license.

9. On May 16, 2002, the Commission staff issued for comment a draft Environmental Impact Statement (EIS) that evaluated the potential environmental impacts of continued operation of the project. Comments on the draft EIS were filed by Idaho Power, Interior, NOAA Fisheries, BLM, the U.S. Environmental Protection Agency (EPA), the Idaho Departments of Fish and Game and Parks and Recreation, Idaho State Historical Society, Shoshone-Bannock Indian Tribes, and Idaho Rivers. On October 30, 2002, Commission staff issued a final EIS for the project.

10. On February 12, 2004, Idaho Power amended its relicense application with the filing of a proposed settlement agreement between it and FWS covering the four Mid-Snake projects and the C.J. Strike Project. The agreement would resolve issues related to the protection of federally listed threatened and endangered snail species and their habitat within the five project areas.

11. The Commission issued public notice of the agreement on February 17, 2004. The Idaho Department of Fish and Game (Idaho DFG) filed comments in support of the agreement. Idaho Rivers United and American Rivers filed comments and a protest in opposition.

12. The Commission has considered all the comments and interventions filed in this proceeding in determining whether, and under what conditions, to issue a new license for the C.J. Strike Project.

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<sup>11</sup> See notice issued April 26, 1999.

<sup>12</sup> Shoshone Paiute Tribes filed a late motion to intervene, which was granted by notice issued April 12, 2001.

**ORIGINAL RELICENSING PROPOSAL**

13. Idaho Power proposed to continue load-following operations at the C.J. Strike Project, release a minimum flow of 3,900 cubic feet per second (cfs), limit maximum daily reservoir fluctuations to 1.5 feet from full pool, limit maximum daily changes in river stage to 4 feet per day, and limit maximum hourly changes in river stage to 2.5 feet per hour. Idaho Power also proposed to stock the project reservoir annually with rainbow trout and fingerling channel catfish; develop and implement a white sturgeon conservation plan; acquire and improve 61 acres of riparian/wetland habitats; incorporate, with Idaho DFG's approval, 329 acres of Idaho Power lands into the C.J. Strike Wildlife Management Area (WMA)<sup>13</sup> and enhance upland and wetland habitats on those lands; continue to provide 2,627 acres of Idaho Power land in the C.J. Strike WMA for public hunting, fishing and recreation; provide operation and maintenance funding for resource stewardship of Idaho Power lands within the C.J. Strike WMA; protect rare plants and plant communities and other habitats on project lands through implementation of grazing and noxious weed control policies defined in its C.J. Strike Land Management Plan; and enhance eight existing recreational facilities.

**THREATENED AND ENDANGERED SPECIES AND THE MODIFIED RELICENSING PROPOSAL**

14. Section 7(a) of the Endangered Species Act of 1973 (ESA)<sup>14</sup> requires federal agencies to ensure that their actions are not likely to jeopardize the continued existence of federally listed threatened and endangered species, or result in the destruction or adverse

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<sup>13</sup> The C.J. Strike WMA, encompassing 10,417 acres, was established in 1953 through an agreement between Idaho Power, Idaho DFG, and the U.S. Fish and Wildlife Service in consideration of effects of project construction and operation. Idaho Power owns 2,627 acres within the C.J. Strike WMA; other landowners include the state of Idaho (738 acres), private landowners (343 acres), and BLM (6,709 acres). The 1953 agreement, approved by the Commission on November 20, 1953 (12 FPC 1400), allows Idaho DFG to use and manage all land owned or controlled by Idaho Power within the management area, not otherwise used for power generation, for the propagation, feeding and conservation of fish, waterfowl and wildlife, and for hunting, fishing, and other general recreational uses by the public. Idaho DFG manages all the land within the C.J. Strike WMA except for certain BLM land management responsibilities. Idaho Power provides funding to Idaho DFG for operation and maintenance of Idaho Power lands within the C.J. Strike WMA.

<sup>14</sup> 16 U.S.C. § 1536(a).

modification of designated critical habitat. When a federal agency determines that a proposed action may affect a threatened or endangered species, it must consult with FWS or NOAA Fisheries and obtain a biological opinion on whether the action is likely to result in a violation of the ESA. After the initiation of formal consultation, section 7(d) of the ESA<sup>15</sup> prohibits an agency from making any irreversible or irretrievable commitment of resources that would foreclose the formulation or implementation of any reasonable and prudent alternative measures that would not violate section 7(a)(2).

15. Federally listed species that occur in the area of the C.J. Strike Project are the endangered Idaho springsnail and threatened bald eagle.<sup>16</sup> The draft EIS issued for the C.J. Strike Project found that relicensing the project would likely adversely affect the Idaho springsnail but would not be likely to adversely affect the bald eagle.<sup>17</sup>

16. Federally listed species that occur in the area of the Mid-Snake Projects are four endangered snail species -- the Utah valvata, Idaho springsnail, Banbury Springs Lanx, and Snake River physa -- and the threatened Bliss Rapids snail and bald eagle. The draft EIS issued in August 2002 for the four Mid-Snake Projects concluded that relicensing the Mid-Snake projects under any of the alternatives analyzed would not adversely affect the bald eagle, but that relicensing the Lower Salmon Falls and Bliss Projects would likely adversely affect, respectively, two and three of the snail species.<sup>18</sup>

17. In light of the above, on January 16 and May 21, 2002, the Commission staff requested formal consultation with FWS under section 7(a)(2) of the ESA as to the Mid-Snake and C.J. Strike Projects, respectively.

18. Subsequently, Idaho Power and FWS engaged in discussions that led to the filing of the proposed settlement agreement. Under the agreement, Idaho Power, in cooperation with FWS, would, during the first six years (study period) of any new licenses issued, study the effects of the C.J. Strike and Mid-Snake Projects' operations on specific listed snail species.

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<sup>15</sup> 16 U.S.C. § 1536(d).

<sup>16</sup> Final EIS at section 4.1.4. The Idaho springsnail was listed as endangered on December 12, 1992 (57 Fed. Reg. 59,244). Critical habitat for this species has not been designated.

<sup>17</sup> Final EIS at p. 250.

<sup>18</sup> See, e.g., the concurrently-issued order relicensing the Bliss Project.

19. During the first four years of the study period, the Bliss and Lower Salmon Falls Projects would be operated for two years in a load-following mode and two years in a run-of-river mode. During the fifth year, both projects would be operated in a run-of-river mode, unless the work group selected pursuant to the agreement<sup>19</sup> decided that another year of load-following operations was necessary for study purposes. The work group would have the discretion to establish an operating regime for the sixth year, but if the group did not establish a regime, Idaho Power would operate those projects in a run-of-river mode for that year.<sup>20</sup>

20. At the end of the above-described study period, Idaho Power would submit for Commission approval a snail protection plan proposing additional measures on behalf of listed snail species, together with any project operational changes required by such new measures.<sup>21</sup> The agreement provides that, pending approval of the snail protection plan, Idaho Power will operate the C.J. Strike Project as a load-following facility and the Bliss and Lower Salmon Falls Projects as run-of-river facilities.

21. Following the filing of the agreement, the Commission staff, by letter of February 26, 2004, affirmed its previous conclusions about the potential effects on threatened and endangered species and requested FWS's biological opinion with respect to Idaho Power's relicensure applications as modified by the proposed settlement agreement.

22. FWS issued its biological opinion on May 14, 2004. As to the C.J. Strike Project, FWS concurred with the Commission staff's conclusion that Idaho Power's modified proposal was likely to adversely affect the Idaho springsnail, but was not likely to

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<sup>19</sup> See sections 4.6 and 4.7 of the agreement.

<sup>20</sup> Throughout the study period, the Shoshone Falls and Upper Salmon Falls Projects would continue their existing run-of-river operations, and the C.J. Strike Project would continue its existing load-following operations.

<sup>21</sup> Article 4.4.4 of the agreement provides for Idaho Power and FWS to request inclusion of a requirement for such a snail protection plan in the new licenses issued for the Lower Salmon Falls, Bliss, and C.J. Strike Projects. Under Article 4.3.5 of the agreement, the snail protection plan would take the place of the snail conservation plan proposed in Idaho Power's relicensing application, except as to measures related to the protection and enhancement of spring habitat of listed snail species on lands owned by Idaho Power.

adversely affect the bald eagle.<sup>22</sup> FWS noted that the Idaho springsnail is not confined to areas subject to fluctuating water levels, and is likely to be tolerant of load-following operations based on the persistence of a large, densely populated colony within an area subject to pronounced stage fluctuations. It also noted that the effects on the snail from load-following at the C.J. Strike Project will be limited in location and time.<sup>23</sup>

23. The biological opinion also concluded that none of the five projects was likely, individually or in combination, to jeopardize the continued existence of any of the listed snail species studied, because the projects would not reduce the reproduction, status, or distribution of the species to the point of appreciably reducing the likelihood of their survival and recovery.<sup>24</sup>

24. Section 7(b) of the ESA provides that if, after consultation, the ESA agency concludes that the proposed action will not jeopardize the continued existence of a species, the ESA agency shall provide the action agency with a written statement that specifies the impact of incidental taking on the species, specifies those reasonable and prudent measures that the ESA agency considers necessary or appropriate to minimize such impact, and sets forth the terms and conditions that must be complied with to implement those measures.

25. FWS' biological opinion does not prescribe any reasonable and prudent measures to minimize impacts on listed snail species at the C.J. Strike Project, finding that relicensing the project as proposed limits incidental take of the Idaho springsnail to the extent practicable.<sup>25</sup> This concludes consultation under section 7 of the ESA.

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<sup>22</sup> The FWS also concluded that the C.J. Strike Project would not be likely to adversely affect the Utah valvata and Snake River physa and would not affect Bliss Rapids snail and Banbury Springs lanx because they are not known to occur in the area.

<sup>23</sup> Operation of the C.J. Strike Project affects nine percent of the Idaho springsnail's designated recovery area.

<sup>24</sup> See FWS's biological opinion, filed with the Commission on May 18, 2004.

<sup>25</sup> The biological opinion prescribed reasonable and prudent measures and terms and conditions for the Lower Salmon Falls and Bliss Projects, as discussed in the new licenses for those projects.

### WATER QUALITY CERTIFICATION

26. Under section 401(a)(1) of the Clean Water Act (CWA),<sup>26</sup> the Commission may not issue a license for a hydroelectric project unless the state water quality certifying agency has issued water quality certification for the project or has waived certification by failing to act within a reasonable period of time, not to exceed one year.<sup>27</sup> Section 401(d) of the CWA provides that state certification shall become a condition of any federal license or permit that is issued.<sup>28</sup> Only a reviewing court can revise or delete these conditions.<sup>29</sup>

27. On September 13, 2001, Idaho DEQ issued water quality certification for the C.J. Strike Project.<sup>30</sup> The conditions of the certification require Idaho Power to (a) pay Idaho DEQ \$50,000 annually to assist in the development of the C.J. Strike and Snake River-Succor Creek total maximum daily loads;<sup>31</sup> and (b) implement after development of such total maximum daily loads any measures determined by Idaho DEQ to be necessary to achieve pollutant loading allocations assigned to the C.J. Strike facility consistent with state and federal law.

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<sup>26</sup> 33 U.S.C. § 1341(a)(1).

<sup>27</sup> The Commission's regulations provide the full one-year waiver period. *See* 18 C.F.R. § 4.38(f)(7)(ii) (2004).

<sup>28</sup> 33 U.S.C. § 1341(d).

<sup>29</sup> *See American Rivers v. FERC*, 129 F.3d 99 (D.C. Cir. 1997).

<sup>30</sup> Idaho DEQ received Idaho Power's request for certification on November 18, 1998. Idaho Power withdrew and simultaneously resubmitted its request for certification on November 15, 1999 and again on September 14, 2000.

<sup>31</sup> Total maximum daily load is generally defined as the sum of the allowable loads of a single pollutant from all contributing point and nonpoint sources that a waterbody can receive and still meet water quality standards. Section 303(d)(1) of the CWA requires states to develop a list of waterbodies not meeting state water quality standards and to establish total maximum daily loads that meet state water quality standards. Section 303(d)(2) of the CWA requires states to submit such lists and total maximum daily loads to the EPA for approval.

28. The water quality certification is attached as Appendix A to this order. Ordering paragraph (D) incorporates the certification conditions of Appendix A as conditions of the license.

### **SECTION 18 OF THE FPA**

29. Section 18 of the FPA, 16 U.S.C. § 810, provides that the Commission shall require the construction, operation, and maintenance by a licensee of such fishways as the Secretaries of Commerce or the Interior may prescribe. Commerce and Interior timely asked the Commission to reserve their respective authorities to prescribe fishways.<sup>32</sup> It is the Commission's policy to include in a license, on request of the agencies, an article reserving the Commission's authority to require the licensee to construct, operate, and maintain such fishways as the agencies might prescribe in the future. Article 418 of the license contains this reservation.

### **RECOMMENDATIONS OF FEDERAL AND STATE FISH AND WILDLIFE AGENCIES UNDER SECTION 10(j) OF THE FPA**

#### **A. Recommendations Pursuant to Section 10(j) of the FPA**

30. Section 10(j)(1) of the FPA, 16 U.S.C. § 803(j)(1), requires the Commission, when issuing a license, to include conditions based on recommendations of federal and state fish and wildlife agencies submitted pursuant to the Fish and Wildlife Coordination Act<sup>33</sup> to "adequately and equitably protect, mitigate damages to, and enhance fish and wildlife (including related spawning grounds and habitat)" affected by a project. If the Commission believes that any such recommendation may be inconsistent with the purpose and requirements of Part I of the FPA, or other applicable law, section 10(j)(2)<sup>34</sup> requires the Commission and the agencies to attempt to resolve such inconsistencies, giving due weight to the recommendations, expertise, and statutory responsibilities of such agencies. If the Commission still does not adopt a recommendation, it must explain how the recommendation is inconsistent with Part I of the FPA or other applicable law and how the conditions imposed by the Commission adequately and equitably protect, mitigate damages to, and enhance fish and wildlife resources.

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<sup>32</sup>See Commerce and Interior's letters to the Commission filed on March 5, 2001.

<sup>33</sup>16 U.S.C. § 661 *et seq.*

<sup>34</sup>16 U.S.C. § 803(j)(2).

31. Interior, NOAA Fisheries, and Idaho DFG submitted 26 recommendations that fall within the scope of section 10(j). One of the recommendations was withdrawn<sup>35</sup> and nine were not adopted. This license contains license articles consistent with the remaining recommendations. These adopted measures require the licensee to: (1) develop a white sturgeon conservation plan (Article 408); (2) stock rainbow trout and channel catfish in the project reservoir (Article 409); (3) acquire and manage riparian and wetland habitats (Article 412);<sup>36</sup> (4) enhance tributary streams and springs and implement various land management measures (Article 413); and (5) implement a snail protection plan (Article 411).<sup>37</sup>

32. Commission staff determined that the following measures recommended by Interior, NOAA Fisheries, and Idaho DFG may be inconsistent with sections 4(e) and 10(a) of the FPA: (1) use the project's active storage capacity for salmon flow augmentation (NOAA Fisheries); (2) maintain multiple permanent water quality monitoring stations at the project for the term of a license (all agencies); and (3) eliminate all project load-following operations for the protection of listed snails and other aquatic resources (Interior and Idaho DFG).<sup>38</sup>

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<sup>35</sup> By letter filed July 5, 2002, NOAA Fisheries withdrew its recommendation for limiting Idaho Power's ability to interfere with salmon augmentation flows released from upstream federal projects. NOAA Fisheries acknowledged that the C.J. Strike Project has very limited potential to affect the delivery and timing of water released by the U.S. Bureau of Reclamation because of its modest diurnal fluctuations in reservoir levels and water storage volumes.

<sup>36</sup> Article 412 requires the licensee to acquire and manage at least 170 acres of riparian, wetland, or spring habitat to mitigate the effects of flow fluctuations on riparian habitat along the Snake River downstream of the project. This amount exceeds the 61 acres recommended by Interior and Idaho DFG and proposed by Idaho Power. The additional 109 acres will mitigate for the operational effects of the project on downstream habitats. (*See* EIS at p. 226). We find that this is in the public interest.

<sup>37</sup> Interior, NOAA Fisheries, and Idaho DFG recommended that the license include reopener provisions for additional measures for anadromous fish, project operations, and unanticipated future circumstances. This license includes, in standard Article 15, the Commission's reservation of authority to reopen the license to modify project structures and operations for the conservation and development of fish and wildlife resources.

<sup>38</sup> *See* draft EIS at p. 237. These three measures comprise all nine section 10(j) recommendations that were not adopted.

33. The inconsistency between the recommendation for the elimination of all project load following operations and sections 4(e) and 10(a) of the FPA is effectively resolved by the settlement agreement. The settlement agreement provides for the C.J. Strike Project to be operated load following, with certain operational restrictions, until otherwise directed by the Commission after the completion of snail studies and the filing of a snail protection plan. Idaho DFG found this approach to be acceptable.<sup>39</sup> Consistent with the agreement, this license includes the following measures for the protection of listed snail species and other aquatic and riparian resources: (1) limit the maximum daily reservoir drawdown (Article 401);<sup>40</sup> (2) release a minimum flow downstream of the project (Article 402); (3) implement maximum ramping rates (Article 403); (4) implement a snail study plan (Article 410); and (5) file a snail protection plan (Article 411).

34. Use of the project's active storage capacity for salmon flow augmentation would increase the probability that flow objectives for salmon protection in the lower Snake River would be met; however, the magnitude of the benefit is unquantifiable, and reservoir drawdown associated with the flow augmentation would adversely impact aquatic, terrestrial, aesthetic, recreational, and potentially cultural resources in the project area.<sup>41</sup> Therefore, this license does not adopt NOAA Fisheries' recommendation to use the project's active storage capacity for salmon flow augmentation.<sup>42</sup>

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<sup>39</sup> See Idaho DFG's letter filed with the Commission on March 10, 2004.

<sup>40</sup> Article 302 requires Idaho Power to file a report with the Commission, describing any effects of limiting reservoir drawdowns on local flooding and spillway adequacy of the project dam. If any adverse effects are found, the report must include a plan and schedule for implementation of remedial measures. The article requires the licensee to implement any measure ordered by the Commission for the remediation of such effects.

<sup>41</sup> EIS at p. 243.

<sup>42</sup> Commission staff attempted to resolve this inconsistency by letter dated May 21, 2002. NOAA Fisheries responded that although it maintains strong support for a Snake and Columbia River augmentation program, it did not intend to dispute the Commission staff's rejection of the recommendation. Alternatively, NOAA Fisheries requested that the Commission include a standard reopener article and refrain from adopting project operating criteria that would limit the potential for delivering water for flow augmentation from the project in July during the license term. (See NOAA Fisheries letter filed with the Commission on July 5, 2002.) As noted, this license

35. Monitoring water quality upstream and downstream of the C.J. Strike Project for purposes of quantifying the project's contribution to decreased water quality would be premature, and therefore have little benefit, prior to the completion of the C.J. Strike and Snake River-Succor Creek total maximum daily loads specifying allowable loads for various pollutant sources, including the C.J. Strike Project.<sup>43</sup> Therefore, this license does not adopt the recommendation for multiple water quality monitoring stations but instead requires the licensee to monitor water temperature, dissolved oxygen, and total dissolved gases at a single location downstream of the C.J. Strike Project and to evaluate the need for additional monitoring and monitoring stations once the total maximum daily loads become established (Article 405 and 406).<sup>44</sup> These measures will ensure the protection of water quality in the project area by monitoring the project's compliance with both Idaho state water quality standards and the C.J. Strike and Snake River-Succor Creek total maximum daily loads once they become established.

**B. Recommendations Pursuant to Section 10(a)(1) of the FPA**

36. Interior, NOAA Fisheries, and Idaho DFG made six recommendations that are not specific measures to protect, mitigate damages to, or enhance fish and wildlife; consequently, we do not consider these recommendations under section 10(j) of the FPA. Instead, we consider these recommendations under the broad public-interest standard of FPA section 10(a)(1), 16 U.S.C. § 803(a)(1).

37. Section 10(a)(1) requires that any project for which the Commission issues a license shall be best adapted to a comprehensive plan for improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce; for the

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includes a standard fish and wildlife resources reopener.

<sup>43</sup> EIS at pp. 244 and 245.

<sup>44</sup> Commission staff attempted to resolve this inconsistency by letter dated May 21, 2002. By letters filed July 5, 9, and 10, 2002, NOAA Fisheries, Interior, and Idaho DFG, respectively, maintain that the Commission should require additional monitoring, because the monitoring stations are needed to evaluate the effectiveness of the prospective C.J. Strike and Snake River-Succor Creek total maximum daily loads, assist in agency decision-making processes, and more clearly define water quality entering the project reservoir. The agencies chose not to meet with Commission staff to discuss the inconsistency.

improvement and utilization of waterpower development; for the adequate protection, mitigation, and enhancement of fish and wildlife; and for other beneficial public uses, including irrigation, flood control, water supply, recreation, and other purposes.

38. Interior, NOAA Fisheries, and Idaho DFG recommend various funds for water quality enhancements, land management, and native fish restoration. Article 413 requires the licensee to fund or otherwise provide for grazing management, noxious weed control, shoreline and sheet erosion control, wetland habitat protection and enhancement, and wildlife habitat management and improvements. Condition 1 of the Idaho State Water Quality Certification (Appendix A) requires the licensee to provide funds for the development of the C.J. Strike and Snake River-Succor Creek total maximum daily loads. The recommendation for the establishment of a native fish restoration fund is too broad in scope to be a reasonable requirement upon this license.<sup>45</sup>

### **HISTORIC PROPERTIES**

39. On May 10, 2002, the Idaho State Historic Preservation Officer, the Advisory Council on Historic Preservation, and the Commission executed a programmatic agreement for managing properties that may be affected by a relicensing of the C.J. Strike Project. Article 415 requires the licensee to implement the programmatic agreement, including but not limited to the Cultural Resources Management Plan for the project. The programmatic agreement serves to satisfy the Commission's responsibilities under section 106 of the National Historic Preservation Act.<sup>46</sup>

### **INTERVENORS' CONCERNS**

#### **A. Adequacy of Protection Measures**

40. Idaho Rivers opposes issuance of any new license as modified by the settlement agreement. It argues that under *Confederated Tribes and Bands of the Yakima Indian Nation v. FERC*, 746 F.2d 466 (9th Cir. 1984) (Yakima), any license conditioned by the agreement would fail to adequately protect fish and wildlife as required by the FPA, because such a license would improperly defer consideration and development of fishery protection measures until after licensing. Idaho Rivers also contends that the agreement fails to provide for interim measures for the protection of listed snail species or other fish and wildlife during the initial six-year study period established by the agreement or for

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<sup>45</sup> EIS at p. 146.

<sup>46</sup> 16 U.S.C. § 470s.

any long term protection measures for the remaining term the new licenses. It argues that the C.J. Strike Project and each of the Mid-Snake Projects should be relicensed as year-round run-of-river facilities, because load following operation of the projects would jeopardize listed snail species and their habitat.

41. Yakima does not require the Commission to have perfect information before it acts, nor does it imply that all environmental concerns be definitively resolved before a license is issued. The test is whether, given uncertainty, the Commission's action meets the standard for judicial review, which requires that the Commission's decision be supported by substantial evidence.<sup>47</sup> The new licenses for the C.J. Strike and Mid Snake Projects meet this test by requiring specific measures for the protection of listed snail species and their habitat both during and after the initial six-year study period required by the settlement agreement based on evidence and findings set forth in the EIS.<sup>48</sup>

42. In the case of the C.J. Strike Project, although the project will continue load-following operations during the study period, the new license contains measures that will protect listed snail species and other fish and wildlife over the entire license term. Article 401 restricts load-following operations, minimizing reservoir fluctuations and potential exposure and desiccation of snails. Similarly, Articles 402 and 403 will maintain habitat conditions for snails and other fish and wildlife below the project by providing minimum instream flows and limiting daily and hourly river stage changes. Articles 412, 413, and 416 require measures that will improve riparian, wetland, and spring habitats of value to snail species and other fish and wildlife. Article 408 requires development of a white sturgeon conservation plan.

43. Idaho Rivers also contends that issuance of any license as conditioned by the settlement agreement would violate the Commission's duty under section 7(a)(2) of the ESA<sup>49</sup> to use the best available scientific information to ensure that Commission action approving any new license does not jeopardize threatened and endangered species. It argues that, instead of providing specific measures to protect listed snail species, the agreement improperly delays protecting listed snail species for six years because of current uncertainties about the probable impacts of project operations on such species. It

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<sup>47</sup>See U.S. Dept. of the Interior v. FERC, 952 F.2d 538, at 546 (D.C. Cir. 1992).

<sup>48</sup> In accordance with the settlement agreement, the licensee will develop a snail protection plan (Article 411) based on the results of the snail studies and will propose, in that plan, a future operational mode for the C.J. Strike Project.

<sup>49</sup> 16 U.S.C. §1536(a)(2).

contends that the ESA requires the Commission to give listed snail species the benefit of the doubt with regard to the need for protection by requiring all five projects to operate run-of-river at all times under the new licenses.

44. The new license for the C.J. Strike Project requires measures, which apply over the entire term of the license, for the protection of aquatic resources, including listed snail species, based on currently available scientific information. The biological opinion concludes on the basis of this information that these measures should ensure that the listed snail species are not jeopardized during the six-year study period at the beginning of the project's license term.<sup>50</sup>

45. As to each of the five projects we are relicensing today, the new licenses adequately address all of the fish and wildlife concerns identified in staff's environmental analysis, as discussed in each order. That additional operational or other measures may be found appropriate after the snail studies are concluded represents not a deferral of environmental protection but the possibility of additional protection based on information not now available.

#### **B. NEPA Compliance**

46. In comments submitted prior to the filing of the agreement, Idaho Rivers asserts that the range of alternatives studied in the EIS is too limited, and that the four alternatives assessed in the EIS are only slightly different from each other. It also contends that the EIS's cumulative impact analysis was inadequate.<sup>51</sup>

47. The EIS considered four alternative development approaches (load following as originally licensed, load following with certain Idaho Power-proposed enhancements, load following with additional enhancements, and year-round run-of-river). Under the National Environmental Policy Act of 1969 (NEPA), the range of alternatives that must

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<sup>50</sup> Idaho Rivers argues that the agreement improperly allows for issuance of new licenses prior to completion of the ESA consultation process required under 16 U.S.C. § 1536(a)(2). However, issuance of the biological opinion concluded the consultation process. Idaho Rivers also argues that the agreement fails to provide for the reinitiation of consultation at the end of the proposed six-year study period. Articles 4.4.1 and 4.5.3 of the agreement emphasize that under 50 C.F.R. § 402.16 consultation may be reinitiated to consider any previously unexamined potential effects on listed species that could come about as a result of proposed modifications to the new licenses.

<sup>51</sup> See Idaho Rivers' comments on the Draft EIS filed on July 5, 2002.

be discussed in an EIS is a matter within an agency's discretion.<sup>52</sup> A discussion of environmental alternatives need not be exhaustive and need only provide sufficient information to permit a reasoned choice of alternatives.<sup>53</sup> With regard to cumulative impacts, an EIS analysis of a number of projects in a river basin need not necessarily examine all projects in a basin.<sup>54</sup> The EIS adequately analyzed cumulative impacts; the analysis tiers off that provided in the Mid-Snake Project EIS.

48. Idaho Rivers maintains further that the EIS was inadequate because it did not consider additional mitigation measures, including resident fish passage, minimum flows requirements, actions for the benefit of spawning gravels, construction of anti-entrainment devices, and measures to facilitate flow augmentation for anadromous fish.

49. The EIS did consider these measures,<sup>55</sup> and the license for the C.J. Strike Project includes pertinent provisions in these areas. This license includes Article 408, which requires the preparation of a white sturgeon conservation plan. The plan would include measures for the protection of, mitigation of damages to, and enhancement of white sturgeon, as well as an evaluation of the feasibility of providing upstream and downstream passage for white sturgeon and, concurrently, for rainbow trout. Article 402 of this license requires a minimum flow of 3,900 cfs for the protection of invertebrates, fish, and listed snails. This license requires the acquisition of riparian, wetland, and spring habitats (Article 412), based in part on findings in the EIS that preservation of spring habitats for resident trout would provide greater benefits than actions such as manipulating substrates in the main-stem river or creating spawning channels as recommended by Idaho Rivers.

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<sup>52</sup>See *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 551-52 (1976).

<sup>53</sup>See *North Carolina v. Federal Power Commission*, 533 F.2d 702 (1976).

<sup>54</sup>See, e.g., *Central Maine Power Co. of New Hampshire*, 81 FERC ¶ 61,251 (1997).

<sup>55</sup>See section 4 and 6 of the EIS.

### **STATE AND FEDERAL COMPREHENSIVE PLANS**

50. Section 10(a)(2) of the FPA requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. We have identified 11 comprehensive plans<sup>56</sup> that are applicable to the C.J. Strike Project and have found no conflicts.<sup>57</sup>

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<sup>56</sup>(1) Monument Resource Area Proposed Management Plan and Final Environmental Impact Statement, 1984, Bureau of Land Management, Department of the Interior, Shoshone, Idaho.; (2) Land and Resource Management Plan for the Sawtooth National Forest, 1987, USDA Forest Service, Twin Falls, Idaho; (3) Idaho Fisheries Management Plan -2001 to 2006, 2001, Idaho Department of Fish and Game, Boise, Idaho; (4) Idaho Water Quality Standards and Wastewater Treatment Requirements, 1997, Idaho Department of Health and Welfare, Division of Environment, Boise, Idaho; (5) 1998 Idaho Comprehensive Outdoor Recreation and Tourism Plan, July 1998, Idaho Department of Parks and Recreation, Boise, Idaho; (6) State Water Plan, 1992, (Revised), Idaho Water Resource Board, Boise; (7) Comprehensive State Water Plan, Snake River: Milner Dam to King Hill, 1993, Idaho Water Resource Board; (8) Northwest Conservation and Electric Power Plan, 1998 (Revised), Northwest Power Planning Council, Portland, Oregon; (9) Protected Areas Amendments and Response to Comments, Document 88-22, 1988, Northwest Power Planning Council, Portland, Oregon; (10) 2000 Columbia River Basin Fish and Wildlife Program, 2000 (Revised), Northwest Power Planning Council, Portland, Oregon; (11) Draft White Sturgeon Management Plan: Status and objectives of Idaho's white sturgeon resources in the Snake River, 2003, Idaho Department of Fish and Game, Boise, Idaho.

<sup>57</sup>In a letter to the Commission filed on July 8, 2002, Idaho DFG states that not requiring year-round run-of-river operation "severely impacts Idaho DFG's ability to meet its management goals for this reach of the Snake River as stated in the Fishery Management Plan (Idaho DFG, 2001)." However, the Commission staff concluded in the EIS that all of the action alternatives studied in the EIS (Idaho Power's proposal, Idaho Power's proposal with staff recommended modifications, and the run-of-river alternative) are consistent with the Fishery Management Plan because all three alternatives are responsive to the relevant objectives for the C.J. Strike Reservoir and downstream reach that are specified in the plan. See EIS at section 6.6 , note 50.

**APPLICANT'S PLANS AND CAPABILITIES**

51. In accordance with sections 10(a)(2)(c) and 15(a) of the FPA, we have evaluated Idaho Power's record as a licensee with respect to the following: (A) conservation efforts; (B) compliance history and ability to comply with the new license; (C) safe management, operation, and maintenance of the project; (D) ability to provide efficient and reliable electric service; (E) need for power; (F) transmission service; (G) cost effectiveness of plans; and (H) actions affecting the public.

**A. Conservation Efforts**

52. FPA section 10(a)(2)(C) requires the Commission to consider the extent of electric consumption efficiency programs in the case of license applicants primarily engaged in the generation or sale of electric power. Idaho Power is such an applicant. Idaho Power has programs to promote cost-effective conservation and load management for residential, commercial, industrial, and agricultural customers. Through these programs, Idaho Power is making satisfactory efforts to conserve electricity and reduce peak hour demands.

**B. Compliance History and Ability to Comply with the New License**

53. Based on a review of Idaho Power's compliance with the terms and conditions of the existing license, we find that Idaho Power's overall record of making timely filings and compliance with its license is satisfactory.

**C. Safe Management, Operation, and Maintenance of the Project**

54. We reviewed Idaho Power's management, operation, and maintenance of the C.J. Strike Project pursuant to the requirements of 18 C.F.R. Part 12 and the Commission's Engineering Guidelines and periodic Independent Consultant's Safety Inspection Reports. We conclude that the dam and other project works are safe, and that there is no reason to believe that Idaho Power cannot continue to safely manage, operate, and maintain these facilities under a new license.

**D. Ability to Provide Efficient and Reliable Electric Service**

55. We reviewed Idaho Power's plans and its ability to operate and maintain the project in a manner most likely to provide efficient and reliable electric service. We find that Idaho Power has been operating the project in an efficient manner within the constraints of the existing license and is likely to continue to do so under a new license.

**E. Need for Power**

56. The C.J. Strike Project, with a rated capacity of 82.8 MW, historically has generated an annual average of 558.3 gigawatt hours (GWh) of electricity, which Idaho Power uses to meet its system load requirements. Idaho Power operates 17 hydroelectric facilities, totaling 1,707 MW of nameplate capacity. These hydroelectric facilities provide about 1,071 average megawatts (aMW), about 60 percent, of Idaho Power's total system requirements under median water conditions. The balance of Idaho Power's firm generation resources are coal fired thermal, purchases from independent power producers, and seasonal power exchanges.

57. In addition to Idaho Power's need for power, we looked at the regional need for power. The C.J. Strike Project is located in the Northwest Power Pool (NWPP) area of the Western Electricity Coordinating Council (WECC) region. The NWPP area includes all or major portions of the states of Washington, Oregon, Idaho, Wyoming, Montana, Nevada, and Utah; a small portion of northern California; and the Canadian provinces of British Columbia, and Alberta. For the period 2003 through 2012, WECC anticipates peak demand and annual energy requirements in the NWPP area to grow at annual compound rates of 2.5 and 2.3 percent, respectively. Resource capacity margins for this winter-peaking area range between 30.5 and 42.1 percent of firm peak demand over this 10-year period, assuming planned additions totaling 11,863 MW are constructed on schedule. For the WECC region as a whole, the summer reliability margin is projected to fall below the recommended minimum of 14 to 15 percent by about 2010 without the new capacity additions that were uncommitted as of the December, 2003, date of the WECC's 10-Year Coordinated Plan Summary.<sup>58</sup>

58. We conclude that the region has a need for power over the near term and that the C. J. Strike Project, which supplies a part of the current regional electricity demand, could continue to help meet part of the regional need for power. We conclude further that present and future use of the project's power, its low cost, its displacement of nonrenewable fossil-fired generation, its contribution to a diversified generation mix and its maintenance of existing capacity support a finding that the power from the C.J. Strike Project will help meet a need for power in the northwest and throughout the entire WECC region in both the short and long term.

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<sup>58</sup> Western Electricity Coordinating Council, 10-Year Coordinated Plan Summary, December 2003.

### **F. Transmission Services**

59. The project's transmission facilities that are required to be licensed include the generator leads, station transformers, and buses located at the powerhouse and two, 138-kV primary transmission lines: one, a 65-mile-long line from the project powerhouse to Idaho Power's Caldwell terminal substation and the other, a 25-mile-long line from the powerhouse to Idaho Power's interconnected transmission line near Mountain Home. Idaho Power proposes no changes that would affect transmission facilities.

### **G. Cost Effectiveness of Plans**

60. Idaho Power is not proposing, nor does this order approve any change in the installed capacity at the C.J. Strike Project. Based on the fact that the maximum hydraulic capacity of the project is exceeded only about 18 percent of the time and the annual plant factor is a relatively high 76.1 percent, staff concludes that additional capacity would not likely be cost-effective at this time. Idaho Power does propose numerous plans and operational procedures for the protection, mitigation and enhancement of environmental resources in the Snake River Basin. Idaho Power's past record as a licensee indicates it is likely to carry out these plans in a cost-effective manner.

### **H. Actions Affecting the Public**

61. In its license application, Idaho Power cited numerous examples of actions it has taken that affects the public including: offering educational programs to schools and other groups on electrical safety, efficient use of electricity, and the environment; several examples of actions taken to protect and enhance environmental resources; and the establishment of policies and procedures, such as the Policy and Guidelines for Private Boat Docks, for the safe and beneficial access and use of project land and water resources. Idaho Power also pays taxes annually to local and state governments and the project provides employment opportunities.

## **ECONOMIC BENEFITS OF PROJECT POWER**

62. In determining whether a proposed project will be best adapted to a comprehensive plan for developing a waterway for beneficial public purposes, the Commission considers a number of public interest factors, including the economic benefit of the project power. As was articulated in *Mead Corp.*,<sup>59</sup> we employ an analysis that uses current costs to compare the costs of the project and likely alternative power, with

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<sup>59</sup>72 FERC ¶ 61,027 (1995).

no forecasts concerning potential future inflation, escalation, or deflation beyond the license issuance date. The basic purpose of the analysis is to provide general estimates of the potential power benefits and costs of a project, and reasonable alternatives to project power.

63. Under the no-action alternative, the C.J. Strike Project generated 558,299 MWh of energy annually. The current annual value of this power is \$24.360 million (about \$44/MWh), and the current annual cost is \$3.350 million (about \$6/MWh), resulting in a net annual benefit of \$21.010 million (about \$38/MWh).<sup>60</sup>

64. As licensed in accordance with the agreement, the water quality certification conditions, and other requirements adopted herein, the C.J. Strike Project will produce an average of about 558,299 megawatthours (MWh) of energy, annually at annual cost of \$4.225 million (about 8 MWh). The current annual value of this amount of power is \$24.360 million (about \$44/MWh), resulting in a net annual benefit of \$20.135 million (about \$36/MWh).

### **COMPREHENSIVE DEVELOPMENT**

65. Sections 4(e) and 10(a)(1) of the FPA<sup>61</sup> require the Commission, in acting on license applications, to give equal consideration to the developmental and environmental uses of the waterway on which a project is located. Any license issued shall be such as in the Commission's judgment will be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses. The decision to license this project, and the terms and conditions included herein, reflect such consideration.

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<sup>60</sup> All generation and cost information is taken from the Commission's FEIS. Power value is based on Idaho Power's year 2000 peak and off-peak avoided energy costs plus the value of firm capacity based on the cost of new combined cycle combustion turbine capacity. In addition to the annual production costs included in this economic summary of project licensing alternatives, under the settlement agreement Idaho Power has agreed to fund studies totaling \$2.840 million related to determining the effects of load following operations on federally listed snail species. Some portion of this cost would be allocable to each of Idaho Power's hydroelectric projects on the middle-Snake.

<sup>61</sup> 16 U.S.C. §§ 797(e) and 803(a)(1).

66. Idaho Power's relicensing proposal incorporates the provisions of the settlement agreement reached by Idaho Power and FWS. The agreement provides for studies on the possible effects of operation of the C.J. Strike and four Mid-Snake Projects on federally listed snail species, followed by the development of a snail protection plan that would address project operations and the protection of federally listed snails for the remainder of the license terms. The agreement provides that, pending approval of the snail protection plan, the C.J. Strike Project would continue to operate as a load-following facility during the initial six-year study period. Based on the currently available scientific evidence, we believe that the C.J. Strike Project should be operated in accordance with the provisions of the agreement. Such operation will protect listed snail species, as well as other fish and wildlife resources, pending the development of information that may lead to additional protective measures, in the form of a snail protection plan, based on a more refined empirical understanding of the effect on listed snail species of different modes of project operation. Accordingly, we have incorporated pertinent provisions of the agreement in Articles 401, 402, 403, 404, 410, and 411 of the new license for the C.J. Strike Project.

67. In analyzing public interest factors, the Commission takes into account that hydroelectric projects offer unique operational benefits to the electric utility system (ancillary benefits). For projects with useable water storage, these benefits include their value as almost instantaneous load-following response to dampen voltage and frequency instability on the transmission system, system-power-factor-correction through condensing operations, and a source of power available to help in quickly putting fossil-fuel based generating stations back on line following a major utility system or regional blackout. Idaho Power operates, and is expected to continue to operate over the term of this license, the C.J. Strike Project in a load following, or block loading, mode to make maximum use of daily inflow (within the constraints of environmental flow requirements) during peak electricity demand periods. By so doing, the C.J. Strike Project will continue to provide a broad range of ancillary service benefits to the region.

68. Based on our review of the Commission staff's analysis of Idaho Power's relicensing proposal and other alternatives, we find that the offer of settlement is in the public interest, and we conclude that operation of the C.J. Strike Project as proposed, with the additional enhancement measures recommended by staff, will be best adapted to a comprehensive plan for the use, conservation, and development of the Mid-Snake River and its tributaries for beneficial public purposes. Operation of the project in the manner required by this license will protect and enhance fish and wildlife resources, water quality, recreational resources, and cultural resources. The electricity generated from the C.J. Strike Project will be beneficial, because it will continue to reduce the use of fossil-fueled, steam-generating electric generating plants, thereby conserving nonrenewable energy resources and reducing atmospheric pollution.

**LICENSE TERM**

69. Pursuant to section 15(e) of the FPA,<sup>62</sup> relicense terms shall not be less than 30 years nor more than 50 years from the date on which the license is issued. Our general policy is to establish 30, 40, and 50-year terms for projects with, respectively, little, moderate, or extensive redevelopment, new construction, new capacity, or additional environmental measures.<sup>63</sup>

70. In issuing both new and original licenses, the Commission coordinates the expiration dates of licenses to the maximum extent possible, to maximize future consideration of cumulative impacts at the same time in contemporaneous proceedings at relicensing.<sup>64</sup> The Commission's intention is to consider cumulative impacts, to the extent practicable, at the time of licensing and relicensing, and to reduce the need to resort to the use of reserved authority. In this instance, the expiration dates of the new licenses for the C.J. Strike Project and the four Mid-Snake Projects should be coordinated, because the five projects will be operated in compliance with a single plan for the protection of listed snail species in the river basin. Because issuance of new licenses for these five projects involves only modest environmental measures, 30-year license terms, effective on the same date, are appropriate for each of the projects. Accordingly, the new license term for the C.J. Strike Project will be 30 years, effective the first day of the month in which this order is issued.

**The Commission orders:**

(A) This license is issued to Idaho Power Company (licensee) to operate and maintain the C.J. Strike Project, for a period of 30 years, effective the first day of the month in which this order is issued. The license is subject to the terms and conditions of the Federal Power Act (FPA), which is incorporated by reference as part of this license, and subject to the regulations the Commission issues under the provisions of the FPA.

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<sup>62</sup>16 U.S.C. § 808(e).

<sup>63</sup>See Consumers Power Company, 68 FERC ¶61,077 at 61,383-84 (1994).

<sup>64</sup>See Use of Reserved Authority in Hydropower Licenses to Ameliorate Cumulative Impacts: Policy Statement, FERC Stats. & Regs. Preambles ¶ 31,010 (December 14, 1994), 59 Fed. Reg. 66,718 (December 28, 1994).

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(B) The project consists of:

(1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary shown by Exhibit G included in the application for new license, filed on November 24, 1998, to the Commission Secretary.

Exhibit G-	FERC Drawing No. 2055-	Showing
1	1008	Project Map
2	1009	Detail Map
3	1010	Detail Map
4	1011	Detail Map
5	1012	Detail Map
6	1013	Detail Map
7	1014	Transmission Lines – Key Map
8	1015	Transmission Lines – Detail Map
9	1016	Transmission Lines – Detail Map

(2) Project works consisting of:

(1) a 3,220-foot-long earthfill dam with a maximum height of 115 feet and containing a 340-foot-wide, 8-bay reinforced concrete spillway structure equipped with 8 radial gates; (2) a 7,500-acre reservoir at normal maximum water surface elevation of 2,455 feet mean sea level (msl), with a gross storage capacity of 240,000 acre-feet; (3) a 158-foot-long, reinforced concrete intake structure containing 3 intakes equipped with mechanically-cleaned trash racks and vertical sliding head gates; (4) three, 342-foot-long, 22-foot-diameter, riveted steel penstocks; (5) a 198-foot-long, 64-foot-wide, and 68-foot-high reinforced concrete powerhouse containing three identical, fixed-blade propeller turbine/generator units with a total installed capacity of 82,800 kW; (4) a 750-foot-long tailrace; (5) two, 138-kilovolt (kV) primary transmission lines (25- and 65-mile-long) from the switchyard to Idaho Power's interconnected transmission system; and (6) other appurtenant facilities.

The following parts of exhibit A and the following exhibit F drawings conform to the Commission's rules and regulations and are to be approved and made a part of the license:

Exhibit A:

Sections A.1, A.2, A.3, A.4, A.5 and A.6.

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## Exhibit F:

Exhibit F-	FERC Drawing No. 2055-	Showing
1	1001	General Site Plan
2	1002	Plan & Section of Dam
3	1003	Spillway Sections
4	1004	Cross-Section of Intake, Spillway & Powerhouse
5	1005	Powerhouse Plans
6	1006	Powerhouse Elevations
7	1007	Single Line drawing

(3) All of the structures, fixtures, equipment or facilities used to operate or maintain the project and located within the project boundary, all portable property that may be employed in connection with the project and located within or outside the project boundary, and all riparian or other rights that are necessary or appropriate in the operation or maintenance of the project.

(C) Exhibit A, F, and G, as designated in ordering paragraph (B) above, are approved and made a part of this license. Exhibits F and G shall be refiled in the Commission's electronic file format as specified in Article 203.

(D) This license is subject to the conditions submitted by the Idaho Department of Environmental Quality under section 401 of the Clean Water Act, as those conditions are set forth in Appendix A to this order.

(E) This license is subject to articles set forth in Form L-5 (October 1975), entitled "Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters and Lands of the United States," and the following additional articles.

Article 201. Administrative Annual Charges. The licensee shall pay the United States the following annual charges, effective as of the first day of the month in which this license is issued:

(A) For the purposes of reimbursing the United States for the Commission's administrative costs, pursuant to Part I of the Federal Power Act, a reasonable amount as determined in accordance with the provisions of the Commission's regulations in effect from time to time. The authorized installed capacity for that purpose is 82,800 kilowatts.

(B) Recompensing the United States for the use, occupancy and enjoyment of 391.04 acres of lands for transmission lines.

(C) Recompensing the United States for the use, occupancy and enjoyment of 2,982.63 acres of lands, other than for the use of transmission lines.

Article 202. Amortization Reserves. Pursuant to section 10(d) of the Federal Power Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. The licensee shall set aside in a project amortization reserve account at the end of each fiscal year one half of the project surplus earnings, if any, in excess of the specified rate of return per annum on the net investment. To the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year, the licensee shall deduct the amount of that deficiency from the amount of any surplus earnings subsequently accumulated, until absorbed. The licensee shall set aside one-half of the remaining surplus earnings, if any, cumulatively computed, in the project amortization reserve account. The licensee shall maintain the amounts established in the project amortization reserve account until further order of the Commission.

The specified reasonable rate of return used in computing amortization reserves shall be calculated annually based on current capital ratios developed from an average of 13 monthly balances of amounts properly included in the licensee's long-term debt and proprietary capital accounts as listed in the Commission's Uniform System of Accounts. The cost rate for such ratios shall be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity shall be the interest rate on 10-year government bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 203. Exhibit drawings. Within 45 days of the date of issuance of the license, the licensee shall file exhibit drawings F and G described in ordering paragraph (C) in aperture card and electronic formats.

(1) Four sets of the approved exhibit drawings shall be reproduced on silver or gelatin 35mm microfilm. All microfilm shall be mounted on type D (3-1/4" X 7-3/8") aperture cards. Prior to microfilming, the FERC Drawing Number (*e.g.*, P-1234-1001 through P-1234-###) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (*e.g.*, F-1, G-1, etc.), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

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Two of the sets of aperture cards along with form FERC-587 shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Division of Dam Safety and Inspections Portland Regional Office. The remaining set of aperture cards and a copy of Form FERC-587 shall be filed with the Bureau of Land Management office at the following address:

State Director  
 Bureau of Land Management  
 Land Services Section (ID-943-A)  
 1387 S. Vinnell Way  
 Boise, ID 83709-1657  
 ATTN: FERC Withdrawal Recordation

(2) The licensee shall file two separate sets of exhibit drawings in electronic format with the Secretary of the Commission, ATTN: OEP/DHAC. A third set shall be filed with the Commission's Division of Dam Safety and Inspections Portland Regional Office. The drawings must be identified as **(CEII) material under 18 CFR §388.113(c)**. Each drawing must be a separate electronic file, and the file name shall include: FERC Project-Drawing Number, FERC Exhibit, Drawing Title, date of this license, and file extension [*e.g.*, P-1234-####, G-1, Project Boundary, MM-DD-YYYY.TIF]. Electronic drawings shall meet the following format specification:

IMAGERY - black & white raster file  
 FILE TYPE – Tagged Image File Format, (TIFF) CCITT Group 4  
 RESOLUTION – 300 dpi desired, (200 dpi min)  
 DRAWING SIZE FORMAT – 24” X 36” (min), 28” X 40” (max)  
 FILE SIZE – less than 1 MB desired

Each Exhibit G drawing that includes the project boundary must contain a minimum of three known reference points, arranged in a triangular format. The latitude and longitude coordinates, or state plane coordinates, of each reference point must be shown and identified on the drawing.

(3) The licensee shall file three separate sets of the project boundary data in a geo-referenced vector electronic file format (such as ArcView shape files, GeoMedia files, MapInfo files, or any similar format) with the Secretary of the Commission, ATTN: OEP/DHAC. The file name shall include: FERC Project Number, data description, date of this license, and file extension [*e.g.*, P-1234, boundary vector data, MM-DD-YYYY. SHP]. The geo-referenced electronic boundary data file must be positionally accurate to  $\pm 40$  feet in order to comply with National Map Accuracy Standards for maps at a 1:24,000 scale. A single electronic boundary data file is

preferred and must contain all reference points shown on the individual project boundary drawings. The latitude and longitude coordinates, or state plane coordinates, of each reference point must be shown. The data must be accompanied by a separate text file describing the map projection used (*i.e.*, UTM, State Plane, Decimal Degrees, etc.), the map datum (*i.e.*, North American 27, North American 83, etc.), and the units of measurement (*i.e.*, feet, meters, miles, etc.). The text file name shall include: FERC Project Number, data description, date of this license, and file extension [*e.g.*, P-1234, project boundary metadata, MM-DD-YYYY.TXT].

Article 204. Headwater Benefits. If the licensee's project was directly benefited by the construction work of another licensee, a permittee, or the United States on a storage reservoir or other headwater improvement during the term of the original license (including extensions of that term by annual licenses), and if those headwater benefits were not previously assessed and reimbursed to the owner of the headwater improvement, the licensee shall reimburse the owner of the headwater improvement for those benefits, at such time as they are assessed, in the same manner as for benefits received during the term of this new license. The benefits will be assessed in accordance with Part 11, Subpart B, of the Commission's regulations.

Article 301. Revised Exhibits. Within 45 days of the date the Commission approves the C.J. Strike Wildlife Management Area (WMA) Operations and Maintenance Agreement or a fish and wildlife management plan for licensee-owned lands within the WMA required by Article 413, and following the acquisition of riparian habitats required by Article 412, the licensee shall submit revised Exhibit G drawings, as appropriate with the Commission for approval and in accordance with the format described in Article 203. The revised project boundary shall include and clearly identify all licensee-owned lands within the WMA. The exhibits shall have sufficient detail to adequately delineate the relative location of project features. The licensee shall submit six copies to the Commission, one copy to the Commission's Portland Regional Director, and one to the Director, Division of Hydropower Administration and Compliance.

Article 302. Reservoir Drawdown Limitation Report. Within 60 days of the date of this license, the licensee shall submit one copy to the Division of Dam Safety and Inspections – Portland Regional Engineer and two copies to the Commission (one of these shall be a courtesy copy to the Director, Division of Dam Safety and Inspections), of a report describing the effects of reservoir drawdown limitations imposed by this license on local flooding and spillway adequacy of the project dam.

The report should include a flood routing study that evaluates the ability of the project to safely pass flows up to the Inflow Design Flood. The frequency that the non-overflow structures would be overtopped under the historical and limited drawdowns

should be compared. The report should discuss if there would be an increased likelihood of low-lying structures located upstream and downstream of the reservoir being flooded under the new operating scenario. If necessary, the report should include a plan and schedule for performing any remedial measures necessary to ensure the continued safe operation of the project during high flows.

The licensee shall implement any remedial measures required by the Division of Dam Safety and Inspections' Portland Regional Engineer.

Article 401. Project Operations. The licensee shall operate the project so that the maximum daily project reservoir drawdown does not exceed 1.5 feet below the normal maximum full pool elevation of 2,455 feet above mean sea level.

The maximum reservoir drawdown limit may be temporarily modified, if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement among the licensee, U.S. Fish and Wildlife Service (FWS), and Idaho Department of Fish and Game (Idaho DFG). Temporary modifications may include the need to:

- (1) protect the performance, integrity, reliability, or stability of the licensee's electrical system or any electrical system with which it is connected, including the need to provide the Western Electric Coordinating Council and North American Electric Reliability Council reserves;
- (2) compensate for an unscheduled loss of generation;
- (3) provide generation during severe weather, energy shortages or periods of market instability;
- (4) inspect, maintain, repair, replace, or improve the licensee's electrical system, including the system associated with the project;
- (5) prevent injury to person(s) or damage to property;
- (6) assist in search and rescue activities;
- (7) respond to emergencies beyond the control of the licensee; and
- (8) address other situations when the licensee, FWS, and Idaho DFG agree upon variation in operations in advance.

If the maximum reservoir drawdown limit is so modified, the licensee shall notify the Commission as soon as possible, but not later than 10 days after each such incident.

Article 402. Minimum Flow. The licensee shall release from the project into the Snake River a minimum flow of 3,900 cubic feet per second, as measured downstream of the powerhouse, or inflow to the project reservoir, whichever is less, for the protection of invertebrates, fish, and federally listed snails in the Snake River.

This flow may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement among the licensee, U.S. Fish and Wildlife Service, and Idaho Department of Fish and Game. Temporary modifications may be as specified in Article 401. If the flow is so modified, the licensee shall notify the Commission as soon as possible, but not later than 10 days after each such incident.

Article 403. Ramping Rates. The licensee shall limit changes in river stage (ramping rates) to 2.5 feet per hour and 4 feet per day, as measured downstream of the powerhouse, for the protection of fish, invertebrates, and federally listed snails in the Snake River.

These ramping rate limits may be temporarily modified if required by operating emergencies beyond the control of the licensee, and for short periods upon mutual agreement among the licensee, U.S. Fish and Wildlife Service, and Idaho Department of Fish and Game. Temporary modifications may be as specified in Article 401. If the ramping rate is so modified, the licensee shall notify the Commission as soon as possible, but not later than 10 days after each such incident.

Article 404. Operational Compliance Monitoring Plan. Within six months of license issuance, the licensee shall file for Commission approval a plan to monitor the reservoir fluctuation limit, minimum flow, and ramping rates, required by Articles 401, 402, and 403.

The plan shall include, but not be limited to:

- (1) a description of the exact location of all gages and other equipment used for monitoring reservoir surface elevations and flows below the powerhouse, the method of calibration for each gage, the frequency of recording for each gage, and a monitoring schedule;
- (2) a provision for maintaining a log of project operation and generation;

- (3) a provision to provide the U.S. Fish and Wildlife Service (FWS), and Idaho Department of Fish and Game (Idaho DFG), gaging and project operation and generation data within 30 days of the date of the specific agency's request for the data; and
- (4) an implementation schedule.

The licensee shall prepare the plan after consultation with the United States Geological Survey, National Marine Fisheries Service, Idaho Department of Environmental Quality, FWS, and Idaho DFG. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 405. Water Temperature and Dissolved Oxygen Monitoring. Within six months of license issuance, the licensee shall file for Commission approval a plan to monitor the water temperature (to the nearest 0.1 degree Celsius) and dissolved oxygen (to the nearest 0.1 milligrams per liter) levels of the Snake River downstream of the project from June 15 through October 15 at 10-minute intervals.

The purpose of this monitoring plan is to ensure that streamflows below the project, as measured immediately downstream of the project tailrace, maintain Idaho state water temperature and dissolved oxygen standards.

The monitoring plan shall include a provision for evaluating the need for additional monitoring locations and periods once the C.J. Strike and Snake River-Succor Creek total maximum daily loads become established.

The monitoring plan shall also include a schedule for:

- (1) implementation of the program;
- (2) consultation with the appropriate federal and state agencies, including the U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NOAA Fisheries), Idaho Department of Fish and Game (Idaho DFG), and Idaho Department of Environmental Quality (Idaho DEQ), concerning the results of the monitoring; and
- (3) filing the results, agency comments, and licensee's response to agency comments with the Commission.

The licensee shall prepare the plan after consultation with the FWS, NOAA Fisheries, Idaho DFG, and Idaho DEQ. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 406. Total Dissolved Gas Monitoring. Within six months of license issuance, the licensee shall file for Commission approval a plan to monitor the total dissolved gas (TDG) levels of the Snake River downstream of the project when the Snake River flow exceeds 25,000 cubic feet per second (cfs).

The purpose of the plan is to ensure that streamflows below the project, as measured immediately downstream of the project tailrace, maintain the Idaho state TDG standard of a maximum 110 percent saturation at atmospheric pressure.

The monitoring plan shall include a schedule for:

- (1) implementation of the program;
- (2) estimation of the quantitative relationship between TDG concentrations and amount of spill at the project dam;
- (3) experimentation with spill configuration to determine if there are combinations of spillway gate settings that may be conducive to TDG reduction;
- (4) determination of the extent of the TDG mixing zone;
- (5) identification of measures available to avoid or reduce any deviations from the State of Idaho TDG standard;
- (6) consultation with the appropriate federal and state agencies, including the U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NOAA Fisheries), Idaho Department of Fish and Game (Idaho DFG), and Idaho Department of Environmental Quality (Idaho DEQ), concerning the results of the monitoring; and
- (7) filing the results, agency comments, and licensee's response to agency comments with the Commission.

The licensee shall prepare the plan after consultation with the FWS, NOAA Fisheries, Idaho DFG, and Idaho DEQ. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 407. Unspecified, Long-term Project Changes. Condition 2 of the Clean Water Act section 401 Water Quality Certification for the project contemplates unspecified, long-term changes to project operations or facilities as determined by the Idaho Department of Environmental Quality for the purpose of achieving pollutant loading allocations assigned to the project consistent with state and federal law. These changes may not be implemented without prior Commission authorization granted after the filing of an application to amend the license.

Article 408. White Sturgeon Conservation Plan. Within one year of license issuance, the licensee shall file for Commission approval, a White Sturgeon Conservation Plan.

The plan shall include, but not be limited to:

- (1) an evaluation of any limiting factors affecting white sturgeon populations in the project area;
- (2) specific descriptions of measures proposed for the protection, mitigation, and enhancement of white sturgeon populations in the project area, the estimated cost of such project specific measures, and all other costs associated with the plan; and
- (3) an implementation schedule.

The licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, U.S. Bureau of Reclamation, Oregon Department of Fish and Wildlife, U.S. Forest Service, U.S. Environmental Protection Agency, the Shoshone-Paiute Tribe, the Nez Perce Tribe, and the Columbia Intertribal Fish Commission. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies and tribes, and specific descriptions of how the agencies' and tribal comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies and tribes to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 409. Fish Stocking Plan. Within one year of license issuance, the licensee shall file for Commission approval a Fish Stocking Plan for the C.J. Strike Project reservoir.

The plan shall include, but not be limited to:

- (1) a provision to annually stock 50,000 catchable-sized (3 fish per pound) rainbow trout and 7,500 8-inch channel catfish in the project reservoir after high spring flows have receded but before the first of July;
- (2) a provision to annually stock 25,000 catchable-sized (3 fish per pound) rainbow trout in the project reservoir after the fall turnover of the reservoir;
- (3) a provision to annually monitor trout catch rates in the project reservoir;
- (4) a provision to file with the Commission by December 31, an annual report evaluating the success of the stocking program, including any proposals to increase, decrease, or terminate stocking. The report shall include copies of any comments and recommendations provided by Idaho Department of Fish and Game (Idaho DFG) and U.S. Fish and Wildlife Service (FWS). The licensee shall allow a minimum of 30 days for the Idaho DFG and FWS to comment and to make recommendations on the completed report before filing it with the Commission. At the same time the completed report is filed with the Commission, the licensee shall provide copies to Idaho DFG and the FWS; and
- (5) an implementation schedule.

The licensee shall prepare the plan after consultation with the FWS and Idaho DFG. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 410. Snail Study Plan. For the purpose of determining the effect, if any, that project operations have on federally listed snails inhabiting the project area, the licensee shall implement the study plan set forth in Attachment 1 of the “Settlement Agreement Concerning the Relicensing of Idaho Power Company’s Mid-Snake and C.J. Strike Hydroelectric Projects” (Settlement Agreement) filed on February 12, 2004, to the extent that the study plan pertains to the C.J. Strike Project.

By no later than April 1 of study years 2 through 4, the licensee shall file a written report with the Commission and send copies to the U.S. Fish and Wildlife Service (FWS) and Idaho Department of Fish and Game (Idaho DFG) documenting snail study efforts conducted during the previous study year and indicating snail study efforts that will take place during the subsequent year. By no later than March 31 of study year 5, the licensee shall file with the Commission and send copies to the FWS and Idaho DFG a written report that documents and describes the study efforts and results of the study. The report shall include a description of the effects of load following operations on federally listed snails.

If any changes are made to the approved study plan, the licensee shall file written notification with the Commission prior to implementing the changes.

Article 411. Snail Protection Plan. By no later than March 31 of study year 6 of the Snail Study Plan required by Article 410, the licensee shall file with the Commission, for approval, a Snail Protection Plan for the project in accordance with section 4.4.4 of the “Settlement Agreement Concerning the Relicensing of Idaho Power Company’s Mid-Snake and C.J. Strike Hydroelectric Projects” filed on February 12, 2004. The plan shall take into account the results of any studies and analyses then available concerning the effect, if any, of project operations on federally listed snails inhabiting the project area. The plan, at a minimum, shall include details of measures proposed to protect federally listed snails at the project and an implementation schedule.

The licensee shall prepare the plan after consultation with the U.S. Fish and Wildlife Service and Idaho Department of Fish and Game. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies’ comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee’s reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the plan is approved by the Commission. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 412. Riparian Habitat Acquisition Plan. Within one year of license issuance, the licensee shall file for Commission approval a plan to acquire and manage at least 170 acres of riparian, wetland, and/or spring habitat to mitigate the effects of flow fluctuations on riparian habitat along the Snake River downstream of the C.J. Strike Project. At a minimum, the plan shall include the following:

- (1) a description of the vegetation or wildlife habitat present on the parcels, including maps and acreage tables showing the parcel location(s), the amount and distribution of each vegetation or habitat cover type on the parcel(s), and a description of existing habitat values in each parcel;
- (2) site-specific management plans including, but not limited to, the identification of specific goals, objectives, and methods for managing the parcel(s), native vegetation establishment, noxious weed control, and grazing management (including controlling trespass grazing through installation and maintenance of fencing as necessary);
- (3) monitoring and maintenance plans for each parcel to ensure success of management goals and objectives;
- (4) installation of boundary markers;
- (5) a schedule and costs for implementation, maintenance, monitoring and reporting; and
- (6) a provision for revising the plan as needed in the future.

The licensee shall acquire the land in fee title or the right to use and manage the land in perpetuity. The licensee shall, in consultation with U.S. Fish and Wildlife Service (FWS), U.S. Bureau of Land Management (BLM), and Idaho Department of Fish and Game (Idaho DFG) explore the feasibility and appropriateness of incorporating these wetlands, riparian and spring habitats into the C.J. Strike Wildlife Management Area (WMA). The licensee shall include in its plan a schedule to incorporate these parcels into the WMA, as appropriate. The plan shall also describe the relationship of the management goals and objectives for these parcel(s) to those broader goals and objectives of the WMA as a whole.

The licensee shall prepare the plan after consultation with the FWS, BLM, and Idaho DFG. The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

Article 413. *C.J. Strike Wildlife Management Area Operations and Maintenance Agreement.* Within six months of license issuance, the licensee shall file for Commission approval, a long-term C.J. Strike Wildlife Management Area (WMA) operations and maintenance agreement with Idaho Department of Fish and Game (Idaho DFG) for the management of licensee-owned lands within the WMA. The purpose of the agreement would be to ensure proper funding and implementation of measures to achieve WMA management goals and objectives on WMA lands owned by the licensee for the continued benefit of fish and wildlife resources associated with the project. At a minimum, the agreement shall include:

- (1) a provision for annual funding to be provided to the Idaho DFG in the amount of no less than \$138,100 adjusted annually for inflation using the consumer price index for implementing: noxious weed control plans, shoreline and sheet erosion control plans, rare and endangered species protection plans, wetland habitat protection and enhancement plans, waterfowl nesting programs, spring and stream protection measures, wildlife habitat improvement plans, amphibian management plans, grazing management, access improvements, and public education programs on licensee-owned lands within the WMA.
- (2) a provision for the establishment and support of a management advisory committee (MAC) to solicit and consider the interests of the licensee, Idaho DFG, U.S. Fish and Wildlife Service (FWS), U.S. Bureau of Land Management (BLM), Idaho Department of Parks and Recreation (Idaho DPR), Idaho State Historic Preservation Office, Elmore County, Owyhee County, Southside Canal Company, and abutting private landowners, to the extent they are interested, in the management of the licensee-owned portions of the WMA;

- (3) a provision for the continued supply of water to the Borden Lake Game Management Area (GMA) in an amount sufficient to support the wildlife habitat goals of the GMA;
- (4) a provision for incorporating the licensee's 329-acre parcel referred to as the "Cabin Site" into the WMA, as appropriate and agreed to with Idaho DFG and FWS.
- (5) a description of the management goals and objectives, native upland and riparian vegetation management measures, and plans for funding and implementing habitat management measures on the "Cabin Site" parcel required by item 4 above;
- (6) a provision for the maintenance of WMA buildings and machinery and purchases of materials necessary for resource management activities on licensee-owned lands within the WMA;
- (7) a provision for providing labor for operation and maintenance associated with the foregoing activities; and
- (8) a schedule for reviewing and modifying the agreement, as needed.

The agreement shall describe and provide for any additional funding levels necessary to provide management of any wetlands, riparian, or spring habitats added to the WMA as a result of the implementation of Article 412.

By December 31 of each year of the license, the licensee shall file a report with the Commission demonstrating payment of allocated funds to the Idaho DFG, describing how such funds were spent to address resources on licensee-owned lands within the project boundary and projecting how such funds will be used the next year, and any agreed to increase in funding levels for the next year.

In the event an operations and maintenance agreement cannot be reached, within one year of license issuance the licensee shall develop and file for Commission approval a fish and wildlife management plan for licensee-owned lands within the WMA for the continued benefit of fish and wildlife resources associated with the project. The plan shall include, but not limited to, the following:

- (1) goals and objectives for the management of licensee-owned lands;
- (2) development and implementation of integrated noxious weed control plans, shoreline and sheet erosion control plans, rare and endangered species protection plans, wetland habitat protection and enhancement plans, waterfowl nesting programs, spring and stream protection measures, wildlife habitat improvement plans, amphibian management plans, grazing management plans (including controlling trespass grazing through installation and maintenance of fencing as necessary), fish stocking plans, access improvements, and public education programs;
- (3) a provision for the continued supply of water to the GMA in an amount sufficient to support the wildlife habitat goals of the GMA;
- (4) a provision for incorporating the licensee's 329-acre parcel referred to as the "Cabin Site" into the WMA and any riparian habitat to be acquired in accordance with Article 412 into the WMA, as appropriate;
- (5) management goals and objectives, a detailed description of the measures to be used to establish and enhance native upland and riparian vegetation, and plans for funding and implementing the habitat management measures on the "Cabin Site" parcel required by item 4 above;
- (6) a plan for the establishment and support of a MAC to solicit and consider the interests of the licensee, Idaho DFG, FWS, BLM, Idaho DPR, Idaho State Historic Preservation Office, Elmore County, Owyhee County, Southside Canal Company, and adjacent private landowners in the management of the licensee-owned portions of the WMA;
- (7) a schedule and cost for implementing the plan; and
- (8) a schedule for reviewing and modifying the plan, as needed.

The licensee's wildlife management plan shall be consistent, coordinated, and compatible with the goals and objectives of the WMA and the policies defined in licensee's C.J. Strike Land Management Plan required by Article 416.

The licensee shall file the operations and maintenance agreement, or habitat management plan for licensee-owned lands if an agreement is not reached, after consultation with the FWS, BLM, Idaho DFG, and Idaho DPR. The licensee shall file with the agreement or the plan documentation of consultation, copies of comments and

recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the agencies' comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the agreement or the plan. The licensee shall not implement the agreement or the plan until notified by the Commission that the agreement or the plan is approved. Upon Commission approval, the licensee shall implement the agreement or the plan, including any changes required by the Commission.

Article 414. Visual Resource Management Plan. Within one year of license issuance, the licensee shall file for Commission approval a Visual Resource Management Plan to improve viewing opportunities at four project locations: Jacks Creek Viewpoint, Bruneau Duck Ponds Viewpoint, Bruneau Arm Viewpoint, and Borden Lake Viewpoint. At a minimum, the plan shall include an implementation schedule and provisions for the following:

- (1) grading to provide safe parking and viewing;
- (2) directional signage from the nearest public road; and
- (3) interpretive information regarding natural and cultural features of interest.

The licensee shall prepare the plan after consultation with the Idaho Department of Parks and Recreation (Idaho DPR). The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the Idaho DPR, and specific descriptions of how the comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the Idaho DPR to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

Article 415. Historic Properties. Upon license issuance, the Licensee shall implement the "Programmatic Agreement Among the Commission, the Advisory Council on Historic Preservation, and the Idaho State Historic Preservation Officer for Managing Historic Properties that May Be Affected by a License Issuing to the Idaho Power Company for the Continued Operation of the C.J. Strike Hydroelectric Project in Elmore and Owyhee Counties, Idaho (FERC No. 2055)," executed on May 10, 2002. In the

event that the Programmatic Agreement is terminated, the licensee shall continue to implement the provisions of its approved Cultural Resources Management Plan. The Commission reserves the authority to require changes to the Cultural Resources Management Plan at any time during the term of the license. If the Programmatic Agreement is terminated, the licensee shall obtain approvals from or make notifications to the Commission and the State Historic Preservation Officer where the Cultural Resources Management Plan calls upon the licensee to do so.

Article 416. C.J. Strike Land Management Plan. Within 6 months of license issuance, the licensee shall file for Commission approval a C.J. Strike Land Management Plan. In addition to identifying and explaining the policies, standards, guidelines, and land use designations that shall be followed to protect and manage environmental resources and public use and safety on project lands, the plan shall also include, at a minimum:

- (1) site-specific maps and detailed information showing schedules, costs, target species, control methods, performance standards, and monitoring and re-treatment measures that shall be implemented to control noxious weeds on lands within the project boundary during the first 5 years of the plan;
- (2) site-specific maps and detailed information showing schedules, costs, protection methods, grazing management, monitoring, and maintenance measures that shall be implemented to protect shorelines and riparian habitat on lands within the project boundary during the first 5 years of the plan; and
- (3) a provision for review, consultation, and revision of the plan as needed every 5 years through the license period.

The licensee shall update and finalize the C.J. Strike Land Management Plan after consultation with the U.S. National Park Service, U.S. Fish and Wildlife Service, U.S. Bureau of Land Management, U.S. Bureau of Reclamation, Idaho Department of Fish and Game, Idaho Department of Parks and Recreation, and Idaho Department of Environmental Quality. The licensee shall file with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how their comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 417. Recreation Management Plan. Within one year of license issuance, the licensee shall file for Commission approval a Recreation Management Plan to provide guidance for implementation of recreation enhancement measures and for ongoing management, operation and maintenance of project recreation resources throughout the license term. At a minimum, the plan shall include provisions for the following:

- (1) continued leasing and cooperative maintenance and operation of the U.S. Air Force Recreation Area;
- (2) improvement of the North Park day-use and tent-camping area by redesigning traffic flow, improving roads and parking, designating camping areas, adding picnic tables and fire rings, adding two group shelters and additional picnic tables to the day-use area, building a pedestrian footpath along the reservoir shore, and adding docks;
- (3) improvement of the North Park recreational vehicle (RV) camping and boat parking areas by redesigning traffic flow, improving roads through the park, redesigning boat trailer parking, defining camping spaces, adding picnic tables and fire rings, adding a group shelter, vault toilet and picnic tables to the day-use area, building a pedestrian footpath along the reservoir shore, and adding docks;
- (4) improvement of the North Park boat-mooring facilities by excavating a channel to allow safer navigation and boat access to the shore and boat docks;
- (5) improvement of Locust Park camping opportunities by adding roads and redesigning traffic flow and parking, defining camping spaces for RVs and tents, adding picnic tables and fire rings, adding a vault toilet, and creating a day-use area with picnic tables and parking;
- (6) improvement of the recreational fishing experience in the vicinity of Locust Park by adding a fish-cleaning station;
- (7) operation and maintenance of the Locust Park RV dump station completed by the licensee in 1999;
- (8) improvement of Scout Park by adding a group picnic shelter and planting trees;

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- (9) participation with U.S. Bureau of Land Management (BLM) in the improvement of Cove Recreation Site by redesigning traffic flow, improving roads through the site, defining camping spaces, constructing a vault toilet, adding picnic tables and fire rings to campsites, constructing a group shelter, placing picnic tables in the day-use area, building a pedestrian footpath along the reservoir shoreline, and adding docks;
- (10) improvement of Narrows Sportsman's Access by adding docks and grading the access road to allow for improved vehicle parking and turn around;
- (11) improvement of Cottonwoods Campground by working cooperatively with Idaho Department of Fish and Game (Idaho DFG) to redesign traffic flow, improve roads through the park, define camping spaces, add picnic tables and fire rings to campsites, landscape, construct a vault toilet, add a group picnic shelter, and add picnic tables and parking to the day-use area;
- (12) improvement of Jacks Creek Sportsman's Access by regrading the road, adding a defined boat-trailer parking area and vault toilet, and building a new dock;
- (13) improvement of Loveridge Bridge North Access by regrading the road, adding a defined boat-trailer parking area, and adding a seasonal toilet;
- (14) implementation of an interpretation/ information program for the public in the form of signs and kiosks at recreational facilities and viewpoints; and
- (15) an evaluation of, and proposal for, a safe and aesthetically pleasing swimming area at North Park free of potential interference from motorized water craft.

For each of the recreation improvement measures listed above (items 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14 and 15), the plan would include, at a minimum, site plans and design drawings; a discussion of how the needs of the disabled were considered in the planning and design of each improvement measure; detailed erosion and sediment control measures; and a schedule for implementation and maintenance.

The licensee shall prepare the plan after consulting with the BLM, Idaho DFG, Idaho Department of Parks and Recreation, Elmore County, and Elmore County Waterways Commission. The licensee shall include with the plan, documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the agencies, and specific descriptions of how the

comments are accommodated by the plan. The licensee shall allow a minimum of 30 days for the agencies to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on project-specific information.

The Commission reserves the right to require changes to the plan. Implementation of the plan shall not begin until the licensee is notified by the Commission that the plan is approved. Upon Commission approval, the licensee shall implement the plan, including any changes required by the Commission.

Article 418. *Reservation of Authority to Prescribe Fishways.* Authority is reserved by the Commission to require the licensee to construct, operate, and maintain, or to provide for the construction, operation, and maintenance of, such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce under section 18 of the Federal Power Act.

Article 419. *Annual Review Meeting.* By no later than December 31 of each license year, the licensee shall:

- (1) consult with the Idaho Department of Fish and Game, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Idaho Department of Environmental Quality to determine the interest and need for a meeting for purposes of discussing the progress of monitoring activities required by this license, including any monitoring results;
- (2) if one or more of the agencies deem a meeting necessary, host and coordinate the meeting, file a summary of the meeting with the Commission, and submit copies of the meeting summary to the participating agencies; and
- (3) if all the agencies do not deem a meeting necessary, file a statement with the Commission indicating that there was no agency interest in a meeting and submit copies of the statement to all of the agencies.

Article 420. *Use and Occupancy.* (a) In accordance with the provisions of this article, the licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain types of use and occupancy, without prior Commission approval. The licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the licensee shall also

have continuing responsibility to supervise and control the use and occupancies, for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The type of use and occupancy of project lands and waters for which the licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities that can accommodate no more than 10 water craft at a time and where said facility is intended to serve single-family type dwellings; (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline; and (4) food plots and other wildlife enhancement. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the use and occupancies for which it grants permission are maintained in good repair and comply with applicable state and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the licensee's costs of administering the permit program. The Commission reserves the right to require the licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modification of those standards, guidelines, or procedures.

(c) The licensee may convey easements or rights-of-way across, or leases of project lands for: (1) replacement, expansion, realignment, or maintenance of bridges or roads where all necessary state and federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures

within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kV or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary state and federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary federal and state water quality certification or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary federal and state approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 water craft at a time and are located at least one-half mile (measured over project waters) from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from project waters at normal surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d)(7) in any calendar year. At least 60 days before conveying any interest in project lands under this paragraph (d), the licensee must submit a letter to the Director, Office of Energy Projects, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G map may be used), the nature of the proposed use, the identity of any federal or state agency official consulted, and any federal or state approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the licensee to file an application for prior approval, the licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraph (c) or (d) of this article:

- (1) Before conveying the interest, the licensee shall consult with federal and state fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.

- (2) Before conveying the interest, the licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.
- (3) The instrument of conveyance must include the following covenants running with the land: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values of the project; and (iii) the grantee shall not unduly restrict public access to project waters.
- (4) The Commission reserves the right to require the licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational, and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G drawings would be filed for approval for other purposes.

(g) The authority granted to the licensee under this article shall not apply to any part of the public lands and reservations of the United States included within the project boundary.

(F) The licensee shall serve copies of any Commission filing required by this order on any entity specified in this order to be consulted on matters related to that filing. Proof of service on these entities must accompany the filing with the Commission.

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(G) This order is final unless a request for rehearing is filed within 30 days of the date of its issuance, as provided in section 313 of the FPA. The filing of a request for rehearing does not operate as a stay of the effective date of this license or of any other date specified in this order, except as specifically ordered by the Commission. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

**Appendix A**  
**State of Idaho Water Quality Certification Conditions**

1. By January 1 of each year after the date of this certification, and until the C.J. Strike TMDLs are completed, IPC shall pay \$50,000 to the Department to assist in the development of the C.J. Strike and Snake River-Succor Creek TMDLs.
2. After the C.J. Strike, Snake River-Hells Canyon and Snake River-Succor Creek TMDLs are completed, IPC shall implement those measures determined by the Department to be necessary to achieve allocations assigned to the C.J. Strike facility consistent with state and federal law requirements. The Department's final determination regarding such measures shall be a condition of this 401 certification. The Department shall attempt to reach agreement with IPC regarding such measures before making its final determination.